GUIDELINES
FOR
STATE ADOPTION
OF
FEDERAL RCRA REGULATIONS BY REFERENCE

Based on the July 1, 1998 CFR

*Note: This guidance is based on the July 1, 1998 CFR. States should be aware that Revision Checklist 166 includes two final rules published on May 6, 1988 (63 FR 24963; StATS Rule Code 166) and July 14, 1998 (63 FR 37780; StATS Rule Code 166.1). The 1998 CFR contains changes addressed by the May 6, 1998 final rule, but does not include changes addressed by the July 14, 1998 final rule. As indicated in the Revision Checklist 166 Summary, the July 14, 1998 technical correction removes three amendments made by the May 6, 1998 rule. Therefore, States that adopt the July 1, 1998 CFR by reference and are also adopting Revision Checklist 166 as part of RCRA Cluster VIII should include the July 14, 1998 final rule as published in the Federal Register in their adoption by reference. Otherwise, States that adopt only the July 1, 1998 CFR will have a partial adoption of Revision Checklist 166. Section XII (Adoption of Specific CFR Parts), shows the specific citations which were amended by the July 14, 1998 final rule.

TABLE OF CONTENTS

GUIDELINES FOR STATE ADOPTION OF FEDERAL RCRA REGULATIONS BY REFERENCE

I. INTRODUCTION

There are three ways for States to adopt Federal Resource Conservation and Recovery Act (RCRA) regulations in order to obtain authorization to run a RCRA Subtitle C program:

a) States can adopt rules that are structured or worded differently from Federal regulations, but that are equivalent in effect and no less stringent;

b) States can adopt the Federal RCRA regulations verbatim; or

c) States can adopt the Federal RCRA regulations by reference.

In verbatim adoption, States promulgate rules that are written exactly as the Federal regulations are, while in adoption by reference States only promulgate references, with appropriate explanatory and qualifying notes, to sections of Federal code.

If it is done carefully, adoption by reference substantially reduces both the work required for a State to keep its adoption of Federal regulations up-to-date and the Regional effort needed to authorize that State. However, there are procedures which should be followed to ensure that this adoption is structured properly so that 1) State regulations refer to the appropriate government official and agency; 2) internal citations reference the correct set of regulations; and 3) compliance and effective dates are not misleading to the regulated community and appropriately reflect the State's potential enforcement responsibilities.

This document serves as a brief guideline for adopting the Federal code by reference. This guidance was developed from 1) information found in EPA's State Authorization Manual (SAM), checklists, and guidance materials from Region 9's Office of Regional Counsel; 2) input from Debra Craig, Region II and Jerry Sanger, Oklahoma Department of Environmental Quality; and 3) working with regulations as part of State authorization package review.

The guideline provides a number of examples to help illustrate how to incorporate Federal RCRA requirements by reference, and to assist States in avoiding some common problems. However, these examples are not exhaustive or comprehensive. Thus, a State actually incorporating a rule by reference will need to evaluate the specific provisions of that rule, and can seek assistance from EPA regional offices in addressing any particular issues.

Finally, this guidance document does not create any binding requirements for States or private parties. It contains guidelines to assist States seeking to incorporate by reference, for purposes of RCRA State authorization, separately-established RCRA requirements. Because it is non-binding guidance, EPA may, without further public notice, update or revise this document in response to suggestions from States or members of the public.

II. CFR DATES

When adopting by reference, it is very important to specify the date of the Code of Federal Regulations (CFR) adopted. Otherwise, it may not be clear which version of the CFR (July 1, 1991 versus July 1, 1995, for example) the State is adopting, which can lead to confusion or legal challenges.

If States adopt Federal provisions without specifying a date, this could be considered a prospective incorporation of Federal regulations by reference (i.e., adoption of Federal provisions that may occur in the future). As indicated in Chapter 3, page 3-3 (Analysis of Authorities) and Appendix D, Section D (Incorporation by Reference), of the SAM, a number of reviewing State courts have held that State statutes and regulations adopting prospective Federal legislation or regulations are an unconstitutional delegation of legislative authority. Therefore, the Attorney General's Statement must address the legal basis for

prospective incorporation by reference. The State's Attorney General needs to demonstrate and cite specific State authority both to promulgate and enforce regulations in this manner.

There are two ways to reference Code of Federal Regulations (CFR) dates.

(1) If all the Federal provisions that a State adopts are from the same publication (e.g., July 1, 1993) of the CFR, the State can include a blanket statement stating that all references to Title 40 of the CFR are from a specific CFR publication (e.g., 40 CFR as of July 1, 1993).

(2) Alternatively, the State can reference the month, date, and year of the CFR each time a portion of the CFR is referenced or adopted.

The latter method is recommended if a State uses different versions of the CFR in its adoptions by reference. For example, a State may adopt 40 CFR Part 262 as of July 1, 1993 while adopting 40 CFR 265 as of July 1, 1992.

III. NOTES AND COMMENTS FOUND IN THE FEDERAL CODE

Notes and comments in the Federal code are explanatory statements and States need not adopt them for authorization.

IV. TYPICAL APPROACHES TO ADOPTION BY REFERENCE OF SECTIONS OF FEDERAL CODE

A State which adopts certain Federal provisions of the CFR by reference should clearly specify if the adoption by reference is subject to additions, modifications or exceptions.

A. Adoption by reference with no modifications

A State may adopt a Federal Part, Subpart or Section by reference with no modification by including in its code, language to the effect that:

> *"The provisions of [**Federal citation**] are hereby adopted and incorporated by reference."*

or using the New Mexico regulations as an example:

> *"Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264, through July 1, 1992, are hereby incorporated as Part V of the New Mexico Hazardous Waste Management Regulations."*

B. Adoption by reference subject to certain additions, modifications and exceptions

The State should include language, such as:

> *"The provisions of [**Federal citation**] are hereby adopted and incorporated by reference subject to the additions, modifications and exceptions set forth in [**State citation where additions, modifications and exceptions are stated**]."*

or alternately, using Oklahoma's regulations as an example:

> *"The following Parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety:*
>
> *(1) **Part 124.** Procedures for Decision Making, except those sections not required by 40 CFR 271.14.*

(2) ***Part 260.*** *Hazardous Waste Management System: General, with the exception of 40 CFR 260.20 through 260.22...*

.
.
.

(12) ***Part 279.*** *Used Oil Management Standards. The only portion of 40 CFR 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."*

C. Federal sections not adopted by reference

A State may choose to not adopt certain provisions for a number of reasons:

1. the State may have more stringent provisions;

2. the State may have broader in scope provisions;

3. the Federal provisions are not required for authorization (See *Section XII*);

4. the Federal provisions are not applicable to the State (See *Section XII*);

5. the Federal provisions are not delegable to States (See *Section XII*).

V. SUBSTITUTIONS OF FEDERAL TERMS AND REFERENCES

A. State analogs to Federal References Contained in Adopted Sections

There are certain situations where a State may need to reference portions of the Federal code that it has adopted by reference. This is particularly true if a State has chosen to modify certain portions of the Federal regulations or has chosen to only partially adopt the Federal code by reference. If the referenced section of Federal code has not been modified by the State, a suggested wording for referencing 261.33, for example, is:

*"261.33 as adopted by reference at [**State citation**]"*

If the referenced section has been modified, a suggested wording for an internal reference to 261.33 would be:

*"261.33 as adopted and amended at [**State citation**]"*

Where the State has completely replaced a section of Federal code with its own code, the State should simply reference its own analog. For example, if a State adopts Part 262 at 11-01-262, with the exception of 262.34, and if the State's analog to "262.34" is found at "11-01-262.01", the State should reference "*11-01-262.01*" as the analog to the Federal reference "262.34". Any reference to 262.34, within the Federal code adopted by reference, should be replaced with the reference to the proper State analog. Thus, it is advised that if a State replaces a portion of the Federal code with its own analog, the State should do an electronic search on the CFR for all internal references to the replaced portion of code. Each internal reference should be replaced with the proper State analog. This internal reference replacement should be conducted for each section of Federal code that the State substitutes with its own code.

Another example illustrating this point is the following adoption of Part 263:

"11-01-263. 40 CFR Part 263 as of July 1, 1993 is adopted by reference subject to the following substitutions:

(01) 263.12 is replaced with "A transporter who stores manifested waste in containers meeting the requirements of 40 CFR 262.30, as adopted by reference at 11-01-262, at a transfer facility for a period of five days or less is not subject to regulation under parts 40 CFR Parts 270, 264, 265 and 268, as adopted by reference at 11-01-270, 11-01-264, 11-01-265, and 11-01-268, with respect to the storage of those wastes."

(02) 263.22(a) is replaced with " A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the

owner or operator of the designated facility for a period of five years from the date the hazardous waste was accepted by the initial transporter."

In such case, all references to 263.12 and 263.22(a) within the Federal code adopted by reference should be replaced by 11-01-263.01 and 11-01-263.02, respectively. Another option is to list all the Federal provisions that will need to be changed and their corresponding State regulations, then add a blanket substitution statement, like the one below, to the beginning of the document.

In the following adoption by reference of 40 CFR Part 263, for all instances where a Federal provision listed in the left column appears, that provision is replaced with the corresponding State reference in the right column.

Federal Provision	*State Provision*
263.12	*11-01-263.01*
263.22(a)	*11-01-263.02*

However, EPA does not recommend this approach, because it may be more confusing to the regulated community.

B. References to Other Federal Laws and Regulations

1. General Discussion

The Federal hazardous waste regulations often refer to other Federal statutes and regulations that a State has not specifically adopted by reference. For example, 40 CFR Part 261.4(a)(2) excludes from the definition of solid waste "industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended." In order to avoid this problem, a State may want to adopt language, such as the following, in its regulations:

"Federal statutes and regulations that are cited in 40 CFR Parts 260 through 266, 268, 270 and 124 that are not specifically adopted by reference shall be used as guidance in interpreting the Federal regulations in 40 CFR Parts 260 through 266, 268, 270 and 124."

Such language solves the cross-reference problem by explaining to the regulated community how these regulations are to be read. By using the phrase "guidance in interpreting", the State will avoid the issue of whether or not the State Agency has the authority to adopt by reference Federal laws other than 40 CFR Parts 260 through 266, 268, 270 and 124. Hence, the reference to the Clean Water Act in the above example will be used to help interpret the scope of the 40 CFR 261.4 exclusions without the State having to take the further step of formally adopting by reference section 402 of the Clean Water Act.

2. References to 40 CFR Parts 60, 61 and 63

The Revision Checklist 154, rule 154.1 (59 FR 62896; December 6, 1994) adds a new method to Appendix A of 40 CFR Part 60. The addition was made because this method is referenced in Subpart CC of both Part 264 and Part 265. Thus, a State may directly reference the method at 40 CFR Part 60, Appendix A or incorporate this method into its regulations and reference the method within its regulations. If the first approach is used, the State must make sure that its Administrative Procedure Act allows the State to reference the Federal regulations. While the following regulations/ methods/appendices were not added by this rule, they are referenced in this new rule. Thus, a State may either directly reference these regulations/ methods/appendices or incorporate them into its regulations and reference the appropriate State analog:

- 40 CFR Part 60
- Specific references noted:
  - 60.112(b)
  - 60.114(b)
  - Subpart VV
  - Appendix A

- 40 CFR part 61
- Specific references noted:
  - 61.346(a)(1)
  - 61.346(b)(1) through (b)(3)
  - Subpart V

- 40 CFR Part 63
- Specific references noted:
  - Appendix A
  - Appendix C

C. References to DOT

For clarity, States should adopt language in their regulations specifying that:

> *"Any reference to the 'Department of Transportation' or 'DOT' shall mean the 'U.S. Department of Transportation'."*

D. References to EPA, EPA Administrator, Regional Administrator

The State should ensure that it substitutes references to "EPA" and "EPA (Regional) Administrator" with the appropriate State Agency and State Agency Administrator. The State should also substitute the analogous State term for "Administrator," "Regional Administrator," "Assistant Administrator;" "Assistant Administrator for Solid Waste and Emergency Response," "State Director," "United States Environmental Protection Agency," "U.S. Environmental Protection Agency," "EPA Headquarters", "EPA Regions" and "Agency" which also appear in the Federal code. Exceptions include the following:

1. References to "EPA identification numbers," "EPA hazardous waste numbers," "EPA test methods," "EPA publications," "EPA form(s)," "EPA guidance" or "EPA Acknowledgment of Consent".

2. Use of "EPA", "Administrator", etc. in any non-delegable section of code. These include: 1) provisions in 40 CFR Part 262, Subpart E and Part 263, Subpart B regarding governmental oversight of exports of hazardous waste, 2) 268.5, 268.6, 268.42(b), and 268.44(a)-(g) regarding land disposal restrictions, and 3) 279.82(b) regarding State petitions to allow use of used oil as a dust suppressant.

3. References to "EPA" (and synonymous terms) at the specific citations indicated in *Section XII -- Adoption of Specific CFR Parts*.

In order to exclude such citations from the blanket substitution of the Federal terms with the analogous State term, the State should include language such as:

> *"The substitution of terms at (citation at which State's substitution of terms occur) does not apply to 40 CFR (list of Federal citations excluded from the substitution of terms), as adopted in this rule."*

Some examples of how States have approached the substitution of terms portion of adopting the Federal code by reference are as follows:

- West Virginia uses the following very general statement for its substitution of "administrator", "regional administrator" and "director" and also makes specific exceptions in its adoption by reference of each RCRA CFR part:

  "Chief of the office of waste management, West Virginia Division of Environmental Protection" shall be substituted for "administrator", "regional administrator", and "director". In those sections that are not adopted by reference or that are not delegable to the State, "administrator", "regional administrator', and "director" shall have the meaning defined in 40 CFR 260.10."

- New Jersey uses the following definition for "Regional Administrator":

  "'Regional Administrator' as used in the provisions of the Code of Federal Regulations which are incorporated by reference, means the Director of the Division of Solid and Hazardous Waste of the New Jersey Department of Environmental Protection or his or her designee, except when specifically noted, then it means the Regional Administrator for the EPA Region in which the facility is located or his or her designee".

The State defines "Administrator", "Agency" and "EPA" in a similar fashion. Relative to the use of the term "EPA", an example based on New Jersey's exceptions to this definition for its 40 CFR Part 261 adoption is:

> *"When used in the following Federal citations, the term "EPA" means the United States Environmental Protection Agency: 40 CFR 261.3(a)(2)(iv)(C),(F), and (G), 261.6(a)(3)(i)(A), 261.6(a)(3)(i)(B), 261.22(a)(1) and (2) and Appendix IX."*

E. References to "State"

Federal references to "State(s)", "authorized state", "approved state" or "approved program" should be replaced with the name of the State, except at:

1. 40 CFR 260.10 definitions of "Person", "State", and "United States";

2. 40 CFR Part 262;

3. 40 CFR 264.147(a)(1)(ii), (b)(1)(ii), (g)(2) and (i)(4);

4. 40 CFR 265.147(a)(1)(ii), (g)(2) and (i)(4);

5. 40 CFR 270.2 definitions of "Approved program or approved State", "Director", "Final authorization", "Interim authorization", "Person", and "State"; and

6. 40 CFR 124.2(a) definitions of "Director", "Interstate agency", "Person" and "State".

F. References to *Federal Register*

All references to "*Federal Register*" should not be replaced with the name of the State's Register, except at 260.20(c) &(e).

G. References to RCRA

1. General reference to "RCRA"

States should substitute their own statutes for the Federal terms "Resource Conservation and Recovery Act", "RCRA", "Subtitle C of RCRA", "RCRA Subtitle C", or "Subtitle C", when referring either to an operating permit or to the Federal hazardous waste program as a whole (i.e., not a specific provision of RCRA), except at:

a. 40 CFR 260.10 definition of "Act or RCRA"
b. 40 CFR Part 262 Appendix
c. 40 CFR 270.2 definition of "RCRA"
d. 40 CFR 270.51(d) reference to "EPA-issued RCRA permit".

2. References to specific sections of RCRA

In adoption by reference, States should not adopt references to Federal statutes and authorities which States do not have direct authority to enforce. States are strongly encouraged to provide analogs for each of the RCRA references to such Federal statutes. Otherwise States may not have the authority to enforce the RCRA regulatory provisions.

One way to accomplish this is for a State to add the phrase *"or any comparable provisions of [the State's statutes] and implementing regulations"* after each RCRA citation, except after references to RCRA section 3008. Another approach is to directly replace the RCRA reference with the appropriate State statutory analog. An example of such an approach comes from New Jersey's regulations:

> *"(c) The following provisions of 40 CFR 262 are incorporated by reference with the specified changes:*
>
> .
> .
> .
>
> *12. 40 CFR 262.43, delete "sections 2002(a) and 3002(6) of the ACT" and replace with "N.J.S.A. 13:E-1 et seq., N.J.S.A. 13:1D-1 et seq., and all other legislatively conferred powers."*

Note that RCRA section 3008 addresses Federal Enforcement Authorities and should not be substituted with State enforcement authorities. Instead, all references to these Federal authorities

should remain and the State should also reference its own analog addressing its enforcement authorities. This way it is clear that both the Federal and the State enforcement authorities apply. The Federal authorities should not be left without also including the State's analog. An example of how to approach references to RCRA §3008 within an adoption by reference, comes from New Jersey's regulations:

> *"(c) The following provisions of 40 CFR 262 are incorporated by reference with the specified changes:*
> *1. 40 CFR 262.10(g) , after "penalties prescribed in section 3008 of the Act" add ", N.J.S.A. 13:1E-9 and N.J.A.C. 7:26G-2."*
> .
> .
> .

H. Partial Adoption by Reference

There are two potential problems when a State partially adopts sections of Federal code by reference. First, the section(s) of code adopted by reference may refer to other sections of Federal code which the State has not adopted by reference. In such cases, the State must make sure that the internal references are to the State's own analogs, especially if the State's analogs are different than the Federal references. Second, for those portions of Federal code that were adopted by reference, the State must make sure that the proper substitution of terms is used as discussed in A-G above.

VI. DELISTING: ADOPTION OF 260.20(b) AND 260.22

EPA's 1991 memorandum from the Director of the Office of Solid Waste to the Waste Management Division Directors in the Regions provides guidance on responsibilities of States authorized to administer a RCRA delisting program. Excerpts from that memo are included in this guidance document regarding the adoption by reference of 260.20(b) and 260.22.

States are not required to seek authorization for the RCRA delisting mechanism, thus, a State should decide whether or not it intends to adopt a delisting program. If a State chooses to apply for authorization for delisting, State delisting regulations must be equivalent to 40 CFR 260.20(b) and 260.22. Once a State is authorized to administer a RCRA delisting program, its statutes and regulations operate in lieu of the Federal program. In other words, EPA would not be responsible for the delisting program in the State. States should also note that an exclusion issued by an authorized State is only in effect in that State. Thus, if a facility located in an authorized State wishes to transport and dispose of its waste in another State, the facility must obtain an exclusion from the other authorized State or, if the other State is not authorized for delisting, a Federal exclusion from EPA.

A. State Chooses to Adopt and Run Its Own Delisting Program

A newly authorized State assumes the burden of completing the review of all petitions previously submitted to EPA Headquarters that do not yet have final decisions. Once a State is authorized, EPA Headquarters will immediately transfer the pending petitions for that State to the State and provide the State with copies of petition files and other relevant materials. Decisions to grant or deny petitions will then be the responsibility of the authorized State.

Thus, if a State chooses to run its own delisting program, the State should either:

1. exclude 260.20(b) & 260.22 and write its own delisting provisions, which are at least as stringent as the Federal code, or

2. adopt 260.20(b) & 260.22 by reference and substitute the Federal terms with its own.

B. State Chooses to Not Run Its Own Delisting Program

Facilities located in States that choose not to become authorized to administer a delisting program must petition the appropriate EPA

Regional Office for an exclusion of their wastes. If granted, the Federally excluded wastes are removed from Subtitle C control under RCRA but remain subject to State regulations as a solid waste. EPA strongly suggests that States that elect not to seek delisting authorization specify by statute or regulation the effect of EPA's delisting decisions on wastes generated or managed within those States. In other words, the State should choose to do one of the following options by specifying it in the State's code:

- the State may choose to accept an EPA exclusion decision without change;

- the State may accept an EPA exclusion decision and impose additional, more stringent requirements; or

- the State may choose to prohibit a Federally issued delisting from taking effect within the State. In this case, the Federal delisting would only have effect in other States unauthorized for delisting (i.e., if the petitioned waste was transported out of the State).

Thus, if a State chooses to not run its own delisting program, it can:

1. exclude 260.20(b) and 260.22 from its adoption by reference of Part 260, or

2. include 260.20(b) and 260.22 in its adoption by reference, but not replace "Administrator" with the State analog and make it clear that "Administrator" means the "Administrator of the EPA".

VII. FEDERAL COMPLIANCE AND EFFECTIVE DATES

A. General Discussion

When adopting Federal regulations by reference, States should take into consideration:

(1) whether Federal provisions refer to compliance dates that are already past, and

(2) whether the provisions being adopted were promulgated under HSWA or non-HSWA authority.

Because HSWA rules take effect in all States at the same time, regardless of authorization status, and because the State hazardous waste program operates in lieu of the Federal program upon authorization, EPA advises States to preserve, in their regulations, references to compliance dates and effective dates that are included in the RCRA regulations for HSWA rules[1]. As these dates override State effective dates, clearly preserving them under State law reduces confusion within the regulated community and allows the State to enforce against noncompliers pursuant to the Federal dates. Retaining these dates also serves as notice to the regulated community that additional time for compliance is not allowed under State law for those HSWA compliance/effective dates that have already passed. States which cannot adopt retroactive provisions in their code should refer to the model provided below regarding loss of interim status dates.

When a State does not retain the Federal HSWA compliance or effective dates that have passed, it can only take enforcement action against violations which occur on or after the effective date (or the date substituted for the Federal date) of its regulations. Any violations which occur prior to that date will have to be enforced by EPA. Retention of the Federal dates gives the State the authority to take action against violations as far

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Note: A State cannot be required to retain the HSWA compliance/effective dates. However, under RCRA § 3009, a State's law cannot abolish or extend the Federal deadline. Thus, the Federal date overrides the State date, making a State's later compliance date effectively invalid. Because of this, the main effect of not retaining the Federal dates may be to generate confusion within the regulated community. If a State does not retain a HSWA compliance/effective date, it should make sure that the State's effective date is on or before the authorization date for the State. Otherwise there would be a gap in regulatory coverage.

back as the Federal dates; the State would not have to rely on EPA to take action.

Non-HSWA rules do not take effect in authorized States until the State adopts the non-HSWA rules. Thus, for a non-HSWA rule, the Federal dates should be replaced with the State's analogous dates that are structured relative to the effective date of the State's rule. For example, if the Federal regulations allow one year after an effective date for compliance, the State should allow no more than one year after the effective date of its regulations for compliance.

Note: States can use dates for non-HSWA rules/requirements that precede the Federal date. In this case, the State would be considered more stringent.

B. Examples

While there are several provisions in the Federal code which contain both compliance and effective dates, this guidance document will only address the four areas of the RCRA regulations which have given States the most adoption difficulties. These examples should provide enough guidance, so that other occurrences of compliance/effective dates can be dealt with effectively.

1. 264.193/265.193--Containment and detection of releases (Part 264/265, Subpart J--Tank Systems)

The rule (Revision Checklist 28) which introduced the 264.193 and the 265.193 provisions was promulgated under both HSWA and non-HSWA authorities, with the distinction between the two authorities dependent on tank type. The distinction between HSWA and non-HSWA tanks for the purposes of 264.193 and 265.193 based on the distinctions made in columns 1 and 2 of 51 FR 25464 is:

a. HSWA -

1) tanks owned or operated by a small quantity generator,
2) new underground tanks, or
3) tanks that cannot be entered for inspection.

b. Non-HSWA - tanks which are not owned or operated by a small quantity generator which are either:

1) an existing underground tank, or
2) a tank that can be entered for inspection.

In general, when adopting the tank requirements, States should make a distinction between HSWA and non-HSWA tanks with regard to the effective/compliance dates found in these two sections of code. These requirements relative to HSWA tanks should retain the Federal effective dates. For example, States should not replace the January 12, 1987 date at 264/265.193(a)(2) through (a)(5). Additionally, the State should indicate that this date applies only to HSWA tanks because these requirements as they apply to non-HSWA tanks do not take effect until States adopt and become authorized for the Federal regulations. Thus, the effective date of the state's analogs should replace the Federal dates for this latter group.

Due to the complexity of distinguishing between HSWA and non-HSWA tanks, it is suggested that these terms be defined in the definitions section so that in re-writing the State's analogs to 264.193 and 265.193, these terms can be used without specifying what each term means. Suggested language for adopting 264.193 (or 265.193) is as follows:

> *"40 CFR 264.193 is adopted by reference except that compliance relative to the January 12, 1987 date is applicable only to underground tanks that cannot be entered for inspection. For all other tanks (i.e., inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection, "January 12, 1987" should be replaced with [**insert the effective date of the State's regulations**], wherever this date occurs."*

2. 266.103--Interim status standards for burners

§266.103 contains many dates associated with interim status standards for boilers and industrial furnaces (BIFs). The BIF requirements were promulgated under both HSWA and non-HSWA authorities with the distinction based on the type of unit. However, the non-HSWA units -- sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators -- are all incinerators and not affected by the §266.103 requirements. Thus, there is no need to make a distinction between HSWA and non-HSWA units. If a state has made this distinction, it should remove it at a later rulemaking. However, in the interim this distinction has no affect on the stringency of the State's regulations.

3. 270.73 -- Termination or Loss of Interim Status (LOIS)

RCRA section 3005(e)(2), section 3005(e)(3), and the Federal code's 40 CFR 270.73 set forth the termination dates for interim status for various hazardous waste management units under Federal law. Facilities that failed to submit certifications or part B applications to EPA by the dates specified at 270.73 were subject to LOIS.

As discussed in EPA's August 26, 1991 memo to the EPA Regions, it is important that States preserve the LOIS dates under HSWA rules because they allow States to enforce against LOIS violators, as well as give notice to the regulated community that once a facility has lost its interim status under Federal law, it cannot regain interim status under State law by virtue of authorization of the State program after November, 1985. Thus, States should directly adopt the dates given in 270.73. In a case where a State is reluctant or unable to adopt a retroactive provision into State law, the following language is suggested in order to both preserve the LOIS dates and eliminate the need for a retroactive statement:

> *"As of [**insert effective date of the equivalent State regulations**], any land disposal facility which lost interim status for failing to comply with the requirements under §3005(e)(2) & (e)(3) of RCRA and 40 CFR 270.73, is also denied interim status under State law."*

A more generalized wording that can be used to avoid promulgating a retroactive requirement is:

> *"As of [**insert effective date of the equivalent State regulations**], any facility which failed to qualify for Federal interim status for any waste code promulgated pursuant to HSWA or who lost interim status for failing to certify under HSWA for any newly promulgated waste code, is also denied interim status under State law (rule)."*

Again, the effective date of the State's regulations should be no later than the date of the State's authorization to avoid regulatory gaps.

Because non-HSWA rules do not take effect until a State adopts the non-HSWA rules and obtains EPA approval for authorization, a State could address LOIS requirements for non-HSWA rules by adopting a single, generally applicable rule establishing that all land disposal units subjected to RCRA for the first time by a non-HSWA rule must meet the LOIS requirements within 12 months of the effective date of the State's rule. Alternately, the State could adopt separate LOIS deadlines for each non-HSWA rule affecting land disposal facilities.

4. The Land Disposal Restrictions, Subpart C of Part 268

Throughout Subpart C of the Land Disposal Restrictions (Part 268), there are a series of dates addressing when the land disposal restrictions begin for each grouping of wastes (e.g., solvent wastes, dioxin-containing wastes, California List wastes, etc.). Dates are also used to indicate when national capacity variances end for specific types of wastes within these groups.

Many States adopt by reference these requirements without modification because all of the Part 268 requirements were promulgated under HSWA authority. States which are reluctant or unable to

adopt retrospective provisions into their regulations may have difficulties adopting Part 268, Subpart C in this way. A suggested approach for such States is to adopt this subpart, but to do so by removing all land disposal restriction start dates which have passed as well as excluding all national capacity variances that have ended. This approach may suggest that the State adopt Part 268, Subpart C on a section by section basis to help assure that the adoption is clear to the regulated community. An example of how this might be accomplished for 268.31 is as follows:

> *"40 CFR 268.31, revised as of July 1, 1992 is adopted by reference with the following modifications:*
>
> *1. At 40 CFR 268.31(a), the following phrases are removed: "Effective November 8, 1988," and "unless the following condition applies:"*
>
> *2. 40 CFR 268.31(a)(1), 268.31(b) and 268.31(c) are excluded from the adoption by reference.*
>
> *3. At 40 CFR 268.31(d), "and (b)" is removed."*

The resulting code will read as follows:

> *"(a) The dioxin-containing wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027 and F028, are prohibited from land disposal."*
>
> *"(d) The requirements of paragraph (a) of this section do not apply if:*
>
> *(1) The wastes meet the standards of Subpart D of this part; or*
>
> *(2) Persons have been granted an exemption from a prohibition pursuant to a petition under 268.6, with respect to those wastes and units covered by the petition; or*
>
> *(3) Persons have been granted an extension to the effective date of a prohibition pursuant to 268.5, with respect to those wastes covered by the extension."*

As is apparent from this example, the modifications necessary to accomplish this approach can be somewhat complicated. Another approach would be to adopt by reference all of Part 268 except Subpart C. To replace Subpart C, the State would include a rewritten version with all of the past effective dates and expired national capacity variances removed.

5. 264.570/265.440--Applicability of the Drip Pad Requirements

The wood preserving rule was also promulgated under both HSWA and non-HSWA authorities. HSWA and non-HSWA drip pads are distinguished by the type of waste generated at the drip pad with F032 wastes implying a HSWA drip pad and F034 or F035 wastes implying a non-HSWA drip pad.

The wood preserving requirements have two provisions--264.570(a) and 265.440(a)--that contain dates. The dates at both provisions are the Federal dates for HSWA drip pads. The dates for non-HSWA drip pads should be the analogous dates relative to a State's wood preserving rule. Note, however, that there are two dates in these provisions. The first date, December 6, 1990, was added by the first Wood Preserving Rule (Revision Checklist 82). The second date, December 24, 1992, was added by a correction to that first rule (i.e., Revision Checklist 120).

If a State adopted both rules at the same time, then the non-HSWA drip pad date that should be inserted for both dates is the promulgation date of that State amendment, i.e., the two dates will be replaced with the same date.

If a State first adopted the initial wood preserving rule and then later adopted the revisions to it, then for non-HSWA units, the State should replace the December 6, 1990 date with the promulgation date of its initial wood preserving rule. The December

24, 1992 date should be replaced with the promulgation date for its rule that added the Revision Checklist 120 amendments.

The following example illustrates how to approach HSWA and non-HSWA drip pads. The simplest method of distinguishing between the two groups of drip pads is to include definitions of HSWA and non-HSWA drip pads in the definitions section. These definitions help to simplify the wording of a State's analogs to 264.570 and 265.440 because the distinction does not have to be made between the two groups of drip pads within these provisions. Possible wording includes:

> *"'HSWA drip pad' means a drip pad where F032 wastes are handled.*
>
> *'non-HSWA drip pad' means a drip pad where F034 or F035 wastes are handled."*

Possible wording for analogs to 264.570 and 265.440 includes the following examples:

1. A State has adopted the provisions addressed by Revisions Checklist 82 and 120 at the same time and the promulgation date for that rule was June 16, 1993. In this example, the wording which differs from the Federal wording is underlined so that a State can either use the wording as written or make modifications to the adoption by reference of these provisions.

   "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before June 16, 1993 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to June 16, 1993. All other drip pads are new drip pads. The requirement at [insert analog to 264.573(b)(3)] to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at [insert analog to 264.573(b)(3)] to install a leak collection system applies only to those non-HSWA drip pads that are constructed after June 16, 1993 except for those constructed after June 16, 1993 which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to June 16, 1993."

2. A State has adopted the provisions addressed by Revisions Checklist 82 and 120 at different times with the promulgation dates being June 16, 1992 and September 16, 1993, respectively. In these examples, the wording which differs from the Federal wording is underlined so that a State can either use the wording as written or make modifications to the adoption by reference of these provisions.

   "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before June 16, 1992 and those for which

the owner or operator has a design and has entered into binding financial or other agreements for construction prior to June 16, 1992. All other drip pads are new drip pads. The requirement at [insert analog to 264.573(b)(3)] to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992 except for those constructed after December 24,1992 which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at [insert analog to 264.573(b)(3)] to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 16, 1993 except for those constructed after September 16, 1993 which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to September 16, 1993."

VIII. NON-DELEGABLE PORTIONS OF RCRA

A. Imports/Exports

Because of the Federal government's special role in matters of foreign policy, EPA does not delegate import/export functions. This promotes national coordination, uniformity and expeditious transmission of information between the United States and foreign countries. For a discussion of these issues, see 51 FR 28678, August 8, 1986. Currently, there are three major areas of the RCRA regulations that address imports and exports--Part 262 Subparts E, F and H.

Part 262, Subpart E--Most of the governmental functions covered under Part 262, Subparts E are not delegable to States and the term "EPA Acknowledgment of Consent" should remain "EPA Acknowledgment of Consent." Also the terms "Administrator" and "Regional Administrator" should not be substituted with the State's analogous terms. A State which adopts Subpart E of Part 262 by reference should not apply the blanket substitution of terms to this Subpart. This can be accomplished by the State including the following language in the section of its code where it adopts Federal Part 262, Subpart E by reference:

> *"The substitution of terms in (citation at which State's substitution of terms occur) does not apply in 40 CFR 262.51, 262.52, 262.53, 262.54, 262.55, 262.56 and 262.57, as adopted in this rule."*

See the instructions to Appendix J of the SAM for information on specific provisions within Part 262, Subpart E where the blanket substitution of terms should not be used. Note that although the governmental functions of Subpart E are nondelegable, in accordance with 40 CFR 271.10, the State progam must include requirements respecting international shipments equivalent to those at Subpart E.

Part 262, Subpart F--while addressing imports, this subpart does not have any language which needs to be addressed specially when adopting by reference.

Part 262, Subpart H--This subpart identifies wastes, under RCRA, that are subject to a graduated system of procedural and substantive controls when they move across national borders within the Organization for Economic Cooperation and Development (OECD) for recovery. None of the provisions in Subpart H are delegable to States; in fact, States are not required to adopt these provisions for authorization. However, EPA encourages States to incorporate these requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated Part 262, Subparts E and F. The following are special procedures which should be followed if a State chooses to adopt these provisions by reference:

- Do not substitute any references to United States, U.S., U.S. national procedures, United Nations, U.N., U.N. classification number,

Organization for Economic Cooperation and Development, OECD, Federal Register, EPA Acknowledgment of Consent, Environmental Protection Agency, EPA, and any other Federal Agencies or Offices within Federal Agencies with State terms.

- At 262.85(g), retain the Federal references to 40 CFR 2.203(b) and 260.2.

- You will find the following language, or a variation of this language, at 261.6(a)(5), 262.10(d), 262.58(a), 262.80(a) and 262.89(a)(2):

  "Any person who exports or imports hazardous waste subject to Federal manifest requirements of Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273..."

A State can incorporate this language directly in its regulations; however, the following modified language may be clearer to the regulated community, since the wastes in an authorized State are subject to the State's, rather than Federal, manifest requirements:

> *"Any person who exports or imports hazardous waste, except "State-only waste", subject to the manifesting requirements of [insert State analog to 40 CFR Part 262], or subject to the universal waste management standards of [insert State analog to 40 CFR Part 273]...".*

- States may request copies of the documents and notifications sent to EPA, as long as the request does not limit or in any way interfere with the documents and information which must be submitted to EPA.

B. Land Disposal Restrictions

The following Part 268 sections are not delegable to States because of the national concerns which must be examined when decisions are made relative to them: 268.5 (case-by-case effective date extensions), 268.42(b) (application for alternate treatment method) and 268.44(a)-(g) (general treatment standard variances). "No migration" petitions under 268.6 will also be handled by EPA.

Relative to adopting by reference the non-delegable sections of Part 268, it should be made clear that the authority for carrying out these provisions stays with EPA. To assure this, all occurrences of Regional Administrator, Administrator, EPA, and Director should not be replaced with a State's analogous terms. Thus, exceptions must be made to the blanket substitution of these terms which is typically used when a State incorporates by reference. Approaches for doing this are outlined in Section V above which addresses substitution of Federal terms and references.

Note that the provision at 268.44 addresses two different variances. The provisions at 268.44(a)-(g) address general treatment standard variances. The authority for such variances is not delegable because these variances could result in nationally applicable standards for a new waste treatability group. The provisions at 268.44(h)-(m), on the other hand, address site-specific variances.

In the HWIR-Media proposed rule (61 FR 18828, April 29, 1996), EPA clarified that the authority to review and approve this second type of treatment variance can be delegated to States. For further information see the December 5, 1997 final rule (62 FR 64506). Therefore, special consideration must be given to all provisions in the code that contain internal references to 268.44 in general.

For a State that excludes 268.44(a)-(g) from its incorporation by reference, the internal reference should continue to reference 268.44(a)-(g) in the Federal code. The State should also reference the site-specific variance of 268.44(h)-(m) as incorporated by reference in the State code. For a State that incorporates by reference all of 268.44 but does not subject paragraphs (a)-(g) to the substitutions of terms, the internal reference may be replaced with a reference to 268.44 as incorporated by reference in the State code.

IX. FINANCIAL RESPONSIBILITY REQUIREMENTS

A. 264.143(h), 264.145(h), 265.143(g) and 265.145(g)

These Federal paragraphs address financial mechanisms for multiple facilities. States should include language to clarify that whenever the regulations require that owners and operators notify several Regional Administrators of their financial responsibilities, the owners and operators must notify the State Agency and other State Agencies regulating hazardous waste if the facilities are located in authorized States, or the appropriate Regional Administrators if facilities are located in unauthorized States. The Federal language requires that the notification be made to the Regional administrator; thus, the following Federal language in these sections:

> *"If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions."*

should be replaced with language similar to the following:

> *"If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance must be submitted to and maintained with the State Agency regulating hazardous waste or with the appropriate Regional Administrator if the facility is located in an unauthorized State."*

B. Financial Instruments (264.151)

In several places, the financial instruments at 264.151 require that owners and operators notify all Regional Administrators affected by their financial assurance mechanisms. Under a State's requirements, these Regional Administrators still need to be notified as well as the State. Again, the blanket substitution or redefinition of Federal terms will incorrectly change these requirements. Thus, States adopting by reference need to specifically address these requirements. The following approach is taken from the New Jersey regulations:

> *"Whenever 40 CFR 264.151 requires that owners and operators notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the Department and all Regional Administrators of Regions which are affected by the owner or operator's financial assurance mechanisms."*

X. RCRA EXPANDED PUBLIC PARTICIPATION REQUIREMENTS

States need to except from the adoption by reference the limiting language at 40 CFR §§124.31(a), 124.32(a) and 124.33(a). This can be accomplished in one of the following manners:

(1) except the entire paragraph from the adoption by reference and replace it with the version shown below, or

(2) adopt by reference the entire paragraph subject to the modifications shown below. (Note an example of how to word this is shown at the end of this section after the modifications needed to 124.33(a).)

A. § 124.31 Pre-application public meeting and notice.

(a) *Applicability*. The requirements of this section shall apply to all **[insert the name of the appropriate State hazardous waste permit]** applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to **[insert the name of the appropriate State hazardous waste permit]** applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a **[insert State**

analog to class 3 permit modification] under **[insert State analog to 40 CFR 270.42]**. The requirements of this section do not apply to permit modifications under **[insert State analog to 40 CFR 270.42]** or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

B. § 124.32 Public notice requirements at the application stage.

(a) *Applicability*. The requirements of this section shall apply to all **[insert the name of the appropriate State hazardous waste permit]** applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to **[insert the name of the appropriate State hazardous waste permit]** applications seeking renewal of permits for such units under **[insert State analog to 40 CFR 270.51]**. The requirements of this section do not apply to permit modifications under **[insert State analog to 40 CFR 270.42]** or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

C. § 124.33 Information repository

(a) *Applicability*. The requirements of this section apply to all applications seeking **[insert the name of the appropriate State hazardous waste permit]** permits for hazardous waste management units.

D. Example of incorporation by reference of §124.31(a) with modifications

"The provisions at 40 CFR 124.31(a) are incorporated by reference as of July 1, 1996 with the following modifications:

(a) Replace both occurrences of "RCRA Part B" with "State Part B";

(b) Replace "class 3 permit modification" with "State class 3 permit modification";

(c) Replace all references to "40 CFR 270.42" with [insert state analog to 270.42, e.g., 30-170.42"]; and

(d) Delete the following sentence "For the purpose of the section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR Part 271."

XI. SPECIAL GUIDANCE FOR THE ADOPTION OF SELECTED REVISION CHECKLISTS

A. Revision Checklist 151

Note that the CFR generally includes all rules published through July 1; however, the CFR revised as of July 1, 1996, includes the July 10, 1996 rule. Also, note that two corrections promulgated after July 10, 1996 (August 26, 1996 and the February 19, 1997 rules) are included in this checklist. States incorporating the 1996 CFR by reference should be aware of this and be sure to add the August 26, 1996 and February 19, 1997 rules to their incorporation by reference in order to completely adopt this revision checklist.

B. Revision Checklist 154

EPA encourages States to adopt the Subpart CC requirements as reflected on this consolidated revision checklist. States incorporating the Federal regulations by reference should be aware that five of the seven rules for the Subpart CC standards were promulgated after June 30, 1995.
States choosing to incorporate the Federal regulations through June 30, 1995, should add the September 29, 1995 rule; the November 13, 1995 rule; the February 9, 1996 rule; the June 5, 1996 rule; and the November 25, 1996 rule to their

incorporation by reference in order to completely adopt Revision Checklist 154.

If the State incorporates the Federal regulations through June 30, 1996, only the last of the rules for the Subpart CC standards (the November 25, 1996 final rule) should be added to the incorporation by reference in order to completely adopt Revision Checklist 154.

C. Revision Checklist 165 (Withdrawn)

On April 9, 1999, the United States Court of Appeals for the District of Columbia in Great Lakes Chemical Corporation versus EPA (Docket No. 98-1312), granted the U.S. Government's motion for a voluntary vacatur of the rules addressed by Revision Checklist 165 [Organobromide Production Wastes; (63 FR 24596; May 4, 1998), as amended (63 FR 35147; June 29, 1998)]. Because of this vacatur, EPA has withdrawn this checklist. Revision Checklist 165 added two new wastes (K140 and U408) to the 40 CFR Part 261 listings and amended the land disposal restrictions requirements in 40 CFR Part 268. Note that the final rule published August 10, 1998 (63 FR 42580), is also vacated as it only clarified that the typographical errors made in the May 4, 1998 rule were corrected by the June 29, 1998 rule. States that have chosen to follow the April 9, 1999 vacatur should not include the entries for K140, U408 and 2,4,6-Tribromophenol in their regulations.

D. Revision Checklists 167A and 167C

These two checklists, like the withdrawn Revision Checklist 165, amend the tables at 40 CFR 268.40 and 268.48(a). If a State has chosen to follow the April 9, 1999 vacatur, as addressed by withdrawn Revision Checklist 165, it should not include the following in its regulations:

1. the entries for K140 and U408 in the table at 40 CFR 268.40; and

2. the entry for "2,4,6-Tribromophenol" in the table at 40 CFR 268.48(a).

E. May 28, 1998 Final Rule (63 FR 28556; Revision Checklist 167E)

Note that on page 63 FR 28600, Column 1 of the May 26, 1998 final rule (63 FR 28556; Revision Checklist 167), it is stated that EPA "is revoking five remanded waste listings (K064, K065, K066, K090 and K091) because there is a lack of information demonstrating threats to human health or the environment that would justify a listing at this time". However, the Agency did not amend 40 CFR 261.32 (listings of hazardous wastes from specific sources) to remove the remanded wastes. EPA intends to issue a technical correction in the future, that will include an amendment to remove K064, K065, K066, K090 and K091 from 40 CFR 261.32. Note that these five K wastes will still be regulated under RCRA Subtitle C if they exhibit a hazardous waste characteristic.

XII. ADOPTION OF SPECIFIC CFR PARTS

The following Table lists places in the CFR where EPA has found that something should be changed for an incorporation by reference and provides an explanation of the necessary changes. This table, while extensive, is not a comprehensive list of every provision that needs attention in an incorporation by reference. It is a list of all the places that have come up in actual incorporations by reference; details to assist States wanting to adopt the Federal regulations by reference are provided in the body of this document.

States should carefully review the Federal regulations to ensure that the correct substitutions and modifications are include in their regulations. This is especially true regarding references to RCRA citations, "EPA identification number" and "EPA forms". State and Regional staff are also invited to send recommendations on other provisions that should be added to the Table.

Federal Citation	Guidance
40 CFR Part 260	
260.2	40 CFR 260.2 is not required for authorization; therefore, States do not have to include 40 CFR 260.2 in their adoption of the Federal regulations by reference. The requirements for Availability of Information are found on the "Availability of Information" checklist for RCRA section 3006(f), but 40 CFR 260.2 is not included on that checklist.
260.10 "Act or RCRA"	States need to retain references to certain sections (e.g., RCRA §3008); therefore, States may want to retain the Federal definition of "Act or RCRA" and add a definition for its own statutes. Alternately, States may want to replace the Federal definitions with their analog to RCRA. In such cases, the State should make it clear that at those Federal paragraphs where the RCRA references must remain, the term RCRA has the definition as found in 40 CFR 260.10. See Section V.G for additional discussion regarding Federal references to RCRA.
260.10 "Administrator", "EPA", "Regional Administrator"	Certain sections of the Federal regulations are not delegable to the States and States should therefore retain references to the terms "Administrator", "EPA", and "Regional Administrator". Therefore, States may want to retain these Federal definitions. If a State chooses to replace the Federal terms with the State's analogous term, it should make it clear in its adoption of the non-delegable portions of the Federal regulations that the terms "Administrator", "EPA", and "Regional Administrator" have the meaning found at 40 CFR 260.10.
260.10 "EPA hazardous waste number", "EPA identification number", "EPA Region"	States should not substitute "EPA" with the State term.
260.10 "Existing tank system or existing component" and "New tank system or new tank component"	In the definitions of "Existing tank system or existing component" and "New tank system or new tank component", the references to "July 14, 1986" relative to the commencement of tank installation apply only to HSWA tank systems (i.e., new underground tank systems and those existing underground tanks that cannot be entered for inspection). As discussed in *Section VII.1--Containment and detection of release*, requirements relative to non-HSWA tanks do not take effect until States adopt the Federal regulations. Thus, a State should make it clear in its adoption of these definitions that for non-HSWA tanks (i.e., inground tank systems, onground tank systems, aboveground tank systems and existing underground tank systems that can be entered for inspection), the date relative to the commencement of installation is the promulgation date of the State's tank regulations.
260.10 "Federal agency", "Person"	States should not replace the term "Federal Agency" with a State definition; otherwise, the State's definition for "Person" will not be equivalent to the Federal definition. The term "Federal Agency" is used in the definition for "Person".

Federal Citation	Guidance
260.10 "Hazardous waste constituent"	This definition makes reference to the "Administrator". If a State retains reference to 40 CFR Part 261, Subpart D, it should also retain the reference to "Administrator" (as defined in 40 CFR 260.10).
260.10 "Person", "State", "United States	States should not replace the reference to "State" with its analogous term.
260.11(a)	The references to "EPA Publication" and "U.S. Environmental Protection Agency" should remain. States should not substitute EPA with the State term.
260.20 & 260.22	Delisting–The State must decide whether or not it will have its own delisting program. If it has its own program, it should substitute the Federal terms within 260.20 & 260.22. The State should understand that this program completely replaces the Federal delisting program, with the State program operating in lieu of the Federal Program. If the State chooses not to adopt a delisting program, it has several options which are outlined in Section VI above. The State should also indicate whether it will accept a delisting decision made by EPA. Note that at 260.22(d)(1)(i), the reference to "EPA Publication" should remain. States should not substitute "EPA" with the State term.
260.30, 260.31, 260.32	Variance from Classification as a Solid Waste--A State should decide if it will adopt these provisions. If it does, then the Federal terms should be replaced in these sections. If the State does not adopt these provisions, then 260.31-260.32 should be excluded from the adoption and any reference to these variances within the adopted Federal code should be removed, because, unlike delisting, the EPA does not continue to grant these variances if a State chooses to not adopt these provisions.
Part 260, Appendix I	Not required for authorization.
40 CFR Part 261	
261.2(c)(3) 261.2(c)(4) [Table heading] 261.2(e)(1)(iii) 261.4(a)(16)(iii)	Note that there are typographical errors in the Federal Register article for Revision Checklist 167D (63 FR 28556; May 26, 1998). All these Federal citations refer to "261.4(a)(15)", the Kraft Mill Steam Strippers exclusion, when they should refer to "261.4(a)(16), the exclusion for secondary materials generated by the mineral processing industry.
261.3(a)(2)(v) 261.22(a)(1)&(2) 261.24(a)	The term "EPA Publication" should remain; States should not substitute "EPA" with the State term.
261.4(a)(16)	Note that there are TWO entries for 261.4(a)(16) in the July 1, 1998 CFR. The first 261 4(a)(16) was added by the May 26, 1998 final rule (63 FR 28556; Revision Checklist 167D). The second 261.4(a)(16) entry was added by the June 19, 1998 final rule (63 FR 33785; Revision Checklist 168) and should be numbered 261.4(a)(17).

Federal Citation	Guidance
261.4(b)(11)(ii)	A copy of the written State agreement regarding the provision to assess the groundwater and the need for further remediation should be sent to the Characteristics Section (OS-333), U. S. Environmental Protection Agency and not to the State. A copy of the written agreement may also be sent to the State, if the State chooses to include this requirement. A State which requires a copy of the agreement would be more stringent.
261.4(e)(3)(iii)	Delete "in the Region where the sample is collected".
261.4(f)(1)	This citation refers to "the Regional Administrator, or State Director (if located in an authorized State). Replace the phrase with the appropriate State term for "State Director".
261.5(j)	The July 14, 1998 final rule (63 FR 37780), which is included in Revision Checklist 166 (RCRA Cluster VIII), amended this Federal paragraph. In order to adopt all the provisions addressed by this checklist, States adopting by reference the July 1, 1998 40 CFR should also adopt the July 14, 1998 final rule.
261.6(a)(3)(i)(A)&(B)	This citation addresses shipment for reclamation in a foreign country; thus, the term "EPA Acknowledgment of Consent" should remain "EPA Acknowledgment of Consent". States should not substitute "EPA" with the State term. (See discussion on Part 262, Subpart E, below and in Section VIII.A).
261.6(a)(5)	The following language is used at this Federal paragraph: *". . . subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273..."* A State may incorporate this language directly in its regulations or modify its adoption by reference. This is described in Section VIII.A of this document.
261.10 261.11	These sections address the criteria used by the EPA Administrator for identifying the characteristics and listing of hazardous waste. Therefore, the term "Administrator" should remain the "Administrator of the United States Environmental Protection Agency or his designee" (i.e., as defined in 40 CFR 260.10). (The State, of course, can adopt similar criteria for the listing of state-only waste.)
261.32	Note that on page 63 FR 28600, Column 1 of the May 26, 1998 final rule (63 FR 28556; Revision Checklist 167), EPA intended to revoke five remanded waste listings (K064, K065, K066, K090 and K091). However, the Agency did not amend 40 CFR 261.32 (listings of hazardous wastes from specific sources) to remove the remanded wastes. EPA intends to issue a technical correction in the future, that will include an amendment to remove K064, K065, K066, K090 and K091 from 40 CFR 261.32.
261.32/table 261.33(f)/table Part 261 Appendix VII Part 261, Appendix VIII	The tables at 40 CFR 261.32, 261.33 and Appendices VII&VIII were revised by Revision Checklist 165 (May 4, 1998; 63 FR 24956), This checklist has been withdrawn by EPA because of a U.S. court vacatur on April 9, 1999 (See Section XI.C). States that choose to follow the vacatur should not include the entries for K140 and U408 in their regulations.

Federal Citation	Guidance
Part 261, Appendix IX	40 CFR 261, Appendix IX is not required for authorization; therefore, States do not have to include this Appendix in their adoption of the Federal regulations by reference. If a State chooses to include this Appendix, it should make it clear that the term "EPA" means the U.S. Environmental Protection Agency. Another alternative is to include an analogous Appendix IX that is specific to the State.
40 CFR Part 262	
262.10(d) 262.58(a) 262.80(a)	The following language, or a variation of this language, is used at these Federal paragraphs: *"Any person who exports or imports hazardous waste subject to Federal manifesting requirements of Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273..."* A State can incorporate this language directly in its regulations or modify its adoption by reference. This is described in Section VIII.A of this document.
262.10(g)	EPA retains enforcement authority under RCRA section 3008. Therefore, the reference to "section 3008 of the Act" (i.e., RCRA) should remain. In addition, the State should add its analog to RCRA §3008 to the Federal reference. See Section V.G for additional information.
262.12	This section addresses the assignment and use of EPA identification numbers. References to "EPA Identification Number", "EPA form" should remain such and the State should not substitute "EPA with the State term. Thus, 262.12 should be excluded from any blanket substitution of Federal terms with State terms. If the State requires that the EPA identification number be obtained directly from EPA, then the term "Administrator" should not replaced with the State's analogous term.
262.32(b)	This paragraph addresses container markings. States may want to modify the information requirement to include references to State law and the State Agency which should be contacted.
262.41	The references to "EPA form", "EPA identification number" and "EPA hazardous waste number" should remain. States should not substitute "EPA" with the State term.
262.42(a)(2)	Delete "for the Region in which the generator is located".

Federal Citation	Guidance
Part 262, Subparts E and H (Exports)	Most of the governmental functions covered under Part 262, Subpart E and all of the sections in Subpart H are not delegable to States. Therefore, the following terms should not be substituted with State terms: All references to Administrator, Regional Administrator, United States, U.S., U.S. national procedures, United Nations, U.N., U.N. classification number, Organization for Economic Cooperation and Development, OECD, Federal Register, EPA Acknowledgment of Consent, Environmental Protection Agency, EPA, and any other Federal Agencies or Offices within Federal Agencies. Finally, the term "EPA" should not be replaced with the State's term in "EPA identification number", EPA ID number" and EPA hazardous waste number". See Section VIII.A of this document and the instructions to Appendix J of the SAM for further information.
262.85(g)	The Federal references to 40 CFR 2.203(b) and 40 CFR 260.2 should be retained.
Part 262, Appendix, Item 19	This section contains instructions for owners and operators in authorized and unauthorized States and a list of all EPA Regional offices. A State applying for authorization may want to modify the third paragraph of Item 19 to read as follows: *Owners and operators of facilities located in [INSERT STATE'S NAME] should contact [STATE AGENCY] for information on State Discrepancy Report requirements. If located in another authorized State, the appropriate State Agency should be contacted.*
40 CFR Part 263	
263.11	This section addresses the receipt and use of EPA identification numbers. References to "EPA Identification Number" and "EPA form" should remain as such and the State should not substitute "EPA with the State term. Thus, 263.11 should be excluded from any blanket substitution of Federal terms with State terms. If the State requires that the EPA identification number be obtained directly from EPA, then the term "Administrator" should not replaced with the State's analogous term.
263.20(a), (c), (e)(2) & (f)(2)	These paragraphs in the Federal code address manifest requirements for exports, thus the references to "EPA Acknowledgment of Consent" should remain as such. Also the references to "EPA identification number" at 263.20(e)(2)&(f)(2) should remain. States should not substitute "EPA" with the State term.
263.20(g)(4)	This citation addresses the requirement that transporters must give a copy of the manifest to a U. S. customs official at the point of departure from the U.S. Thus, a State official or agency cannot be substituted for the "U.S. Customs Official". States may, however, request that a copy of the manifest also be sent to them. Note that if a State also requires a copy of the notification, it would be more stringent.

Federal Citation	Guidance
40 CFR Parts 264 and 265	
264.1(f) 265.1(c)(4)	States seeking authorization should not adopt these Federal paragraphs. These paragraphs clarify that the Federal regulations do not apply to an owner or operator located in an authorized State.
264.1(g)(1) 265.1(c)(5)	Replace "the State" with the State's analogous term.
264.11 265.11	These sections address requirements for an EPA identification number. States should not substitute "EPA" with the State term in "EPA identification number" and "EPA form". If the State requires that the EPA identification number be obtained directly from EPA, then the phrase "apply to EPA" should not replaced with the State's analogous term.
264.12(a) 265.12(a)	States cannot receive notifications of intent to import hazardous waste from foreign sources. Thus, States should not substitute the title of the head of their environmental agency for "Regional Administrator" in 264.12(a)(1) and 265.12(a)(1). The 264.12(a) and 265.12(a) notification should be sent to the "Regional Administrator." A State should, therefore, except 264.12(a)(1) and 265.12(a)(1) from its blanket substitution of the State term for "Regional Administrator". Also, at 264.12(a)(2) and 265.12(a)(2), the EPA address should not be replaced with the State's address. Note, however, that States may receive authorization requiring facilities to send to the State copies of the import notifications required under 40 CFR 264.12(a) and 265.12(a).
264.18(a)	Per the comment after 40 CFR 264.18(a), facilities which are located in political jurisdictions other than those listed in 40 CFR Part 264, Appendix VI are assumed to be in compliance with the 40 CFR 264.18(a) requirements. Therefore, States that are not listed in 40 CFR Appendix VI need not adopt 264.18(a), 264 Appendix VI and 270.14(b)(11) by reference. If such a State chooses to include 264.18(a) and 270.14(b)(11) in its regulations, then it should also include 264 Appendix VI.
264.73(b)(10) 265.73(b)(8)	These citations reference 268.5 and 268.6. A State cannot opt to reject petitions granted by EPA for land disposal restrictions under 268.5 and 268.6; therefore, the State should <u>not</u> delete the references to 268.5 and 268.6 at 264.73(b)(10) and 265.73(b)(8) from its code. See discussion for Part 268, below, for additional information.
264.143(h) 264.145(h) 264.151 265.143(g) 265.145(g)	These Federal paragraphs address financial mechanisms for multiple facilities in different States. States should include language to clarify that owners and operators must notify the State's Agency and other State Agencies regulating hazardous waste if the facilities are located in authorized States, or the appropriate Regional Administrators if facilities are located in unauthorized States. An example of how this can be accomplished in found in Section IX, above.

Federal Citation	Guidance
264.147(a)(1)(ii) 264.147(b)(1)(ii) 264.147(g)(2) & (i)(4) 265.147(a)(1)(ii) 265.147(g)(2) & (i)(4)	States should not replace the reference to "State" with its analogous term.
264.149, 264.150 265.149, 265.150	These portions of Federal code apply only to unauthorized States and are not appropriate in the code of States applying for authorization.
264.191(a) 265.191(a)	The Federal requirements at this citation, as introduced by Revision Checklist 28, were promulgated under both HSWA and non-HSWA authorities, with the distinction between the two authorities dependent on tank type. States should retain the Federal compliance date (January 12, 1988) for HSWA tanks. The compliance date for all other tanks (non-HSWA tanks) do not take effect until States adopt the Federal regulations. Thus, a State should make it clear in its adoption of the Federal requirements that for non-HSWA tanks, the compliance date is one year after the effective date of the State's tank regulations. See *Section VII.A.1--Containment and detection of release* for further discussion on HSWA and non-HSWA tanks.
264.191(c) 265.191(c)	The Federal requirement at this citation, as introduced by Revision Checklist 28, was promulgated under both HSWA and non-HSWA authorities, with the distinction between the two authorities dependent on tank type. States should retain the Federal reference to July 14, 1986 for HSWA tanks. For non-HSWA tanks, the State should make it clear in its adoption of the Federal requirements that the applicable date is the promulgation date of the State's tank regulations. See *Section VII.A.1--Containment and detection of release* for further discussion on HSWA and non-HSWA tanks.
264.193 265.193	The Federal requirements at these citations were promulgated under both HSWA and non-HSWA authorities, with the distinction between the two authorities dependent on tank type. Thus, States should retain the Federal effective dates with respect to the HSWA tanks (i.e. all new underground tanks and existing underground tanks that cannot be entered for inspection). The requirements for all other tanks were promulgated under non-HSWA tanks and do not take effect until the States adopt and become authorized for the Federal regulations. See *Section VII.A.1--Containment and detection of release* for further discussion.

Federal Citation	Guidance
264.301(l)	This section is applicable only to a landfill located within the State of Alabama. This section of code is inappropriate for other States to adopt by reference.
264.570(a) 265.440(a)	The wood preserving rule was promulgated under both HSWA and non-HSWA authorities. States should be sure that a date is included for both HSWA and non-HSWA drip pads. The non-HSWA dates that should be used are dependent on when a State adopts Revision Checklists 82 and Revision Checklist 120. See the discussion at Section VII.B.5 above.
264.1030(c)	This provision specifies that for owners or operators of process vents, the requirements of §§ 264.1032 through 264.1036 must be incorporated into a permit, when that permit is reissued under § 124.15. Because § 124.15 is not required for State authorization, States should replace the reference to "§ 124.15" with a reference to "§ 124.5" which addresses "Modifications, revocation and reissuance, or termination of permits."
264.1082(c)(4)(ii) 265.1083(c)(4)(ii)	These paragraphs discuss hazardous waste treatment technology established by EPA in 40 CFR 268.42(a) or by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b). Because 40 CFR 268.42(b) is a non-delegable provision, States should not replace the second occurrence of "EPA" with the State analogous term.
Part 264, Appendix VI	This section specifies political jurisdictions for various States where facilities must demonstrate compliance with 264.18(a). Per the comment after 40 CFR 264.18(a), facilities which are located in political jurisdictions other than those listed in 40 CFR Part 264, Appendix VI are assumed to be in compliance with the 40 CFR 264.18(a) requirements. Therefore, a State that is not listed in 40 CFR Appendix VI need not adopt 264.18(a), 264 Appendix VI and 270.14(b)(11) by reference. If such a State chooses to include 264.18(a) and 270.14(b)(11) in its regulations, then it should also include 264 Appendix VI.
40 CFR Part 266	
266.103	As discussed in Section VII.B.2 above, §266.103 contains many dates associated with interim status standards for boilers and industrial furnaces (BIFs). The BIF regulations were promulgated under both HSWA and non-HSWA authorities with the distinction based on the type of unit. However, the non-HSWA units -- sludge dryers, carbon regeneration units, infrared incinerators and plasma arc incinerators -- are all incinerators and not affected by the §266.103 requirements. Thus, there is no need to make a distinction between HSWA and non-HSWA units. If a State has made this distinction, it should remove it at a later rulemaking. However, in the interim this distinction has no affect on the stringency of the State's regulations.
40 CFR Part 268	
268.1(e)(3)	Exclude the 268.1(e)(3) reference to "EPA" from the blanket substitution of terms. States should not replace "EPA" with the State's analogous term because this Federal paragraph addresses wastes for which EPA has not promulgated land disposal prohibitions or treatment standards.

Federal Citation	Guidance
268.2(j)	This paragraph defines "inorganic metal-bearing waste" as one for which EPA has established treatment standards for metal hazardous constituents, and which meet certain specific requirements. The reference to "EPA" should remain.
268.5 268.6 268.42(b) 268.44(a)-(g) (See the instructions to Appendix J of the SAM for further information.)	Federal citations 268.5, 268.42(b), and 268.44(a)-(g) address regulations which are under the sole responsibility of the EPA Administrator. These sections of Federal code are not delegable to States because of the national concerns which must be examined when decisions are made relative to them. Section 268.6 is currently non-delegable. 268.5 covers the procedures for granting case-by-case extensions to an effective date of a land disposal restriction. Under 268.6 (no-migration petition), EPA may grant petitions to allow disposal of certain hazardous wastes provided certain criteria are met. Under 268.42(b), EPA may grant waste-specific variances from a treatment standard. Under 268.44(a)-(g), EPA may grant general variances from a treatment standard. In adopting the non-delegable provisions of 40 CFR Part 268, a State should either: 1) exclude these sections of code from the Part 268 adoption or 2) exclude these sections of code from the State's replacement of the terms "Administrator" and "Federal Register" with the State's analogous terms. An example of the first alternative would be for the State's adoption of 40 CFR Part 268 to read as follows: *"40 CFR Part 268 and its appendices, as of July 1, 1989, are adopted by reference except for 40 CFR 268.5, 268.6, 268.42(b) and 268.44(a)-(g). The authority for implementing these excluded CFR sections remains with the U. S. Environmental Protection Agency."* An example for the second alternative is as follows: *"40 CFR Part 268 and its appendices, as of July 1, 1989, are adopted by reference. Any references to "Administrator" or "Regional Administrator" are replaced with "Director" except for 40 CFR 268.5, 268.6, 268.42(b) and 268.44(a)-(g). The Administrator of the U.S. Environmental Protection Agency is responsible for carrying out these excluded sections of 40 CFR Part 268. Reference to Federal Register in 40 CFR 268.5, 268.6, 268.42(b) and 268.44(a)-(g) implies the Federal Register published by the U. S. government."*

Federal Citation	Guidance
Internal references to 268.5, 268.6, 268.42(b) and 268.44(a)-(g)	States should not delete the following citations or references to these citations from its code. Such references appear in the following citations in Part 268: 268.1(c)(1) . . . . . applicable to extensions granted under 268.5 268.1(c)(2) . . . . . applicable to petitions granted under 268.6 268.7(a)(4) . . . . . reference to 268.5 and 268.6 268.30(c) . . . . . extension includes reference to 268.5(h)(2) 268.30(d)(2) . . . . . applicable to petitions granted under 268.6 268.30(d)(4) . . . . . applicable to extensions granted under 268.5 268.31(c) . . . . . extension includes reference to 268.5(h)(2) 268.31(d)(2) . . . . . applicable to petitions granted under 268.6 268.31(d)(3) . . . . . applicable to extensions granted under 268.5 268.33(b)(2) . . . . . applicable to petitions granted under 268.6 268.33(b)(5) . . . . . applicable to extensions granted under 268.5 268.34(c) . . . . . extension includes reference to 268.5(h) 268.34(d)(2) . . . . . applicable to petitions granted under 268.6 268.34(d)(4) . . . . . applicable to extensions granted under 268.5 268.38(c) . . . . . extension includes reference to 268.5(h)(2) 268.38(d)(2) . . . . . applicable to petitions granted under 268.6 268.38(d)(4) . . . . . applicable to extensions granted under 268.5 268.39(e) . . . . . extension includes reference to 268.5(h)(2) 268.39(f)(2) . . . . . applicable to petitions granted under 268.6 268.39(f)(4) . . . . . applicable to extensions granted under 268.5 268.40(b) . . . . . reference to 268.42(b) 268.40, Table, Footnote 11 . . . . . reference to 268.42(b) 268.50(d) . . . . . reference to 268.5 and 268.6 States should replace internal references to 268.44 with a reference to the non-delegable 268.44(a)-(g) in the Federal code and with a reference to the delegable 268.44(h)-(m) as incorporated by reference in the State code. Such references appear in the following citations in Part 268: 268.30(d)(3), 268.33(b)(3), 268.34(d)(3), 268.38(d)(3), 268.39(f)(3) and 268.50(e).
268.9(d)	This paragraphs makes references to "EPA region or authorized State". States should replace this phrase with the State's analogous term.
268.13	States do not need to adopt requirements equivalent to this paragraph because this section of Federal code contains the schedule by which EPA must evaluate wastes for land disposal restrictions. If a State adopts the Federal section, it should retain the references to "section 3001" and "Administrator" and not replace them with State analogs.
268.33	A new 40 CFR 268.33 was added by Revision Checklist 165 (May 4, 1998; 63 FR 24956, as amended June 29, 1998; 63 FR 35147). This checklist has been withdrawn by EPA because of a U.S. court vacatur on April 9, 1999 (See Section XI.C). States that choose to follow the vacatur should not include 40 CFR 268.33 in their regulations.

Federal Citation	Guidance
268.40/table	The table at 40 CFR 268.40 was revised by Revision Checklist 165 (May 4, 1998; 63 FR 24956, as amended June 29, 1998; 63 FR 35147). This checklist has been withdrawn by EPA because of a U.S. court vacatur on April 9, 1999 (See Section XI.C). States that choose to follow the vacatur should not include the entries for K140 and U408 in their regulations.
268.40(b)	There is a reference to treatment technology approved by the Administrator under the procedures set forth in § 268.42(b). 40 CFR 268.42(b) is non-delegable to States; therefore, the reference to "Administrator" should remain. States should not substitute "Administrator" with the State term.
268.40(b)&(f)	The reference to "EPA Publication" should remain. States should not substitute "EPA" with the State term.
268.40(g) 268.48(a)	These provisions each reference the time span between August 26, 1997 and August 26, 1998. 40 CFR 268.40(g) discusses that during this time span, the treatment standards for certain wastes may be satisfied by either meeting the standards specified in the table at 268.40(g) or by treating the waste by certain specified technologies. Footnote 6 to the Universal Treatment Standards table at 40 CFR 268.48(a) specifies that during the August 26, 1997 - August 26, 1998 time span, certain constituents are not "underlying hazardous constituents" as defined at 40 CFR 268.2(i). States should not replace the dates in these two provisions with State effective dates. See the discussion at Section VII.B.4 above for more information.
268.44(o)	The provision at 40 CFR 268.44(o) was originally added to the Federal code by a March 25, 1991 rule at 56 FR 12351. Due to the limited applicability of the variance addressed by this rule, no revision checklist was necessary for the rule. Revision Checklist 157 made changes to 268.44(o) and the citation was included on that checklist for completeness. States do not have to adopt 40 CFR 268.44(o) in their code, unless the variance is extended to a facility in that particular State.
268.48/table	The table at 40 CFR 268.48 was revised by Revision Checklist 165 (May 4, 1998; 63 FR 24956). This checklist has been withdrawn by EPA because of a U.S. court vacatur on April 9, 1999 (See Section XI.C). States that choose to follow the vacatur should not include the entry for "2,4,6-Tribromophenol" in their regulations.
Part 268, Subpart C	Throughout Subpart C of Part 268, there are a series of dates addressing when the land disposal restriction begin for each grouping of wastes. Dates are also used to indicate when national capacity variances end for specific types of wastes within these groups. Many States adopt by reference these requirements without modification because all of the Part 268 requirements were promulgated under HSWA authority. States which are unable to adopt retrospective provisions may have difficulties adopting Part 268, Subpart C in this way. For such States, it is suggested that they adopt this subpart, but do so by removing all land disposal restriction start dates which have passed as well as excluding all national capacity variances that have ended. See the discussion at Section VII.B.4 above for more information.

Federal Citation	Guidance
40 CFR Part 270	
270.1(a)&(b) 270.3 270.51	These Federal paragraphs are not required for authorization. Therefore States may choose to exclude them from their incorporation by reference.
270.2	Certain sections of 40 CFR Part 270 (e.g. 270.5) address the interrelationships between the State and EPA. Therefore, States should retain the following definitions in their regulations as found in Federal code. These definitions should be excluded from the State's blanket substitution of "EPA" (and synonymous terms) with State terms: "Administrator", "Approved program or approved State", "Director", "Environmental Protection Agency", "EPA", "Final authorization", "Interim authorization", "Major facility", "Permit", "Regional Administrator", and "State/EPA Agreement".
270.2 "Person", "State"	States should not replace the reference to "State" with its analogous term.
270.5 introductory paragraph through 270.5(c)	This section addresses quarterly reports submitted by the State Director to the Regional Administrator; thus, the references to "EPA", "Regional Administrator" and "Administrator" should remain. Section 270.5 should be excluded from the blanket substitution of terms.
270.10(e)(2)	This paragraph addresses publication in the Federal Register by the EPA Administrator. The references to "Administrator", "Federal Register" and "EPA" should not be replaced with the State's analogous terms; therefore, exclude 270.10(e)(2) from the blanket substitution of terms.
270.10(e)(3)	This citation addresses compliance order issued under section 3008 of RCRA by the Administrator, thus, the term "Administrator" should not be replaced. See *Section V.G--References to RCRA* for further discussion.
270.10(f)(2) 270.10(g)(1)(i)&(ii)	States should modify these paragraphs so that it is clear that the application for permits should be submitted to the State Director. States which adopt the paragraphs with no modifications should retain the terms "EPA" and "Administrator".
270.10(f)(3)	States should exclude the reference to "Administrator" from the blanket substitution of terms because this paragraph addresses the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator under section (6)(e) of the Toxic Substances Control Act.
270.11(a)(3)	States should retain the term "Regional Administrator". In this paragraph, the term is used as an example to clarify the meaning of "a senior executive officer" in a Federal Agency.

Federal Citation	Guidance
270.14(b)(11)	This paragraph specifies the information required to demonstrate compliance with 264.18(a). Per the comment after 40 CFR 264.18(a), facilities which are located in political jurisdictions other than those listed in 40 CFR Part 264, Appendix VI are assumed to be in compliance with the 40 CFR 264.18(a) requirements. Also, per the comment after 40 CFR 270.14(b)(11), no information is required for those facilities located in a political jurisdiction not listed in 40 CFR Appendix VI. Therefore such a State need not adopt 264.18(a), 264 Appendix VI and 270.14(b)(11) by reference. If such a State chooses to include 264.18(a) and 270.14(b)(11) in its regulations, then it should also include 264 Appendix VI.
270.14(b)(18)	States need not adopt 270.14(b)(18) because it addresses a State financial mechanism in compliance with 264.149 or 264.150.
270.14(b)(20)	The paragraph addresses information requirements that may be necessary to enable the Regional Administrator to carry out his duties under Federal laws as required in 270.3. States are not required to adopt 270.3--Consideration under Federal law. States should review this paragraph and decide how they want to adopt it into their code.
270.14(b)(21)	This citation references 268.5 and 268.6. A State cannot opt to reject petitions granted by EPA for land disposal restrictions under 268.5 and 268.6, therefore, the State should not delete the references to 268.5 and 268.6 at 270.14(b)(21) from its code. See discussion for Part 268, above, for additional discussion.
270.32(a)	This paragraph refers to EPA issued permits. States can adopt the Federal paragraph and retain the reference to "EPA". Otherwise, the phrase "and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)" should be deleted.
270.32(b)(2)	This paragraph makes reference to "Administrator or State Director"; thus a State that adopts the paragraph by reference with no modification should retain the term "Administrator" at this citation.
270.32(c)	This Federal paragraph refers to a State issued permit and a permit issued by EPA. Therefore, a State which adopts this Federal paragraph without modification should retain the reference to "EPA".
270.65 270.66	Note that these two sections are HSWA provisions and were added by Revision Checklists 17Q and 85. However, 40 CFR 271.14 on permitting requirements has not been amended to add these sections. The 40 CFR 270.65 provisions are optional; whereas, the 40 CFR 270.66 provisions are required for authorization.
270.72(a)(5)&(b)(5)	These citations address corrective action orders issued under RCRA section 3008(h) by EPA, thus, the term "EPA" should not be replaced. See *Section V.G--References to RCRA* for further discussion.
270.73	270.73 addresses the termination dates for interim status, or loss of interim status (LOIS), for various hazardous waste management units. The LOIS dates were promulgated under HSWA authority, thus, States should adopt the LOIS dates given at 270.73 into their regulations. See *Section VII.A.3--Termination or Loss of Interim Status (LOIS)* for detailed discussion.

Federal Citation	Guidance
40 CFR Part 124, Subparts A and B	
Part 124 provisions that are not required for authorization	The following Part 124 sections and paragraphs are not required for authorization. 124.1 124.2 124.3(b)-(g) 124.4 124.5(b) and (e)-(g) 124.6(b), (c)&(d)(4)(ii)-(v) 124.7 124.8(b)(3), (4) & (8) 124.9 124.10(a)(1)(iv) 124.10(c)(1)(iv)-(viii) 124.10(d)(1)(vii)-(viii) 124.10(d)(2)(iv) 124.12(b)-(e) 124.13 through 124.16 124.17(b) 124.18 through 124.21
124.6(e)	Only the last sentence of the paragraph applies to draft permits prepared by a State. A State may modify its adoption by reference by deleting the first three sentences. If a State chooses to retain the first three sentences, then the references to "EPA" and "Regional Administrator" should remain.
124.10(b)(1)	The last sentence should be deleted because it addresses NPDES permits.
124.10(c)(1)(ii)	The reference to "EPA" should remain because it requires that EPA must also receive a copy of the public notice when the draft permit is prepared by the State.
124.31(a) 124.32(a) 124.33(a)	States should modify these Federal paragraphs to eliminate references to EPA permits. See Section X for an example of how this can be accomplished. Note that 40 CFR 124.31, 124.32 and 124.33 are non-HSWA provisions and were added by Revision Checklist 148. However, 40 CFR 271.14 on permitting requirements has not been amended to add these sections. All the provisions are required for authorization.
40 CFR Part 273	
273.20(b) 273.20(c) 273.40(b) 273.40(c) 273.56	The "EPA Acknowledgment of Consent" is an export paper that is prepared by EPA. Thus, a State which adopts Part 273 by reference should not apply the blanket substitution of terms to these sections; the term "EPA Acknowledgment of Consent" should remain as such. (Also see the entry for Part 262, Subpart E, above for a detailed discussion on the governmental functions related to exports that are not delegable to States)
273.32(a)(3)	The paragraph addresses notification to EPA as required by 40 CFR Part 165. The reference to "EPA" should remain; States should not replace“EPA” with the State analogous term.
40 CFR Part 279	
279.10(i)	The July 14, 1998 final rule (63 FR 37780), which is included in Revision Checklist 166 (RCRA Cluster VIII), amended this Federal paragraph. In order to adopt all the provisions addressed by this checklist, States adopting by reference the July 1, 1998 40 CFR should also adopt the July 14, 1998 final rule.

Federal Citation	Guidance
279.42 279.51 279.56 279.57 279.58 279.62 279.71	"EPA form" and "EPA identification number" should remain as such. Thus, the references to "EPA" at these citations should be excluded from the blanket substitution regarding analogous State terms.
279.43(c)(3)(ii)	The paragraph addresses a report required by 49 CFR 171.16 to the Director, U.S. DOT Office of Hazardous Materials Regulations. States should not replace the Federal terms with State analogs.
279.74(b)-(b)(4)	The July 14, 1998 final rule (63 FR 37780), which is included in Revision Checklist 166 (RCRA Cluster VIII), amended this Federal paragraph. In order to adopt all the provisions addressed by this checklist, States adopting by reference the July 1, 1998 40 CFR should also adopt the July 14, 1998 final rule.
279.82	This section addresses the use of used oil as a dust suppressant. The function discussed at the paragraph is one that only EPA can conduct. Thus, States should rewrite this section and address whether the State has applied to EPA and has been granted permission to use used oil as a dust suppressant in the State. If the State has been disapproved by EPA or does not want to allow such use of used oil, 279.82(a) should be rewritten so it ends right after "prohibited". 279.82(b) should be written, for example, as: "The list of States given at 40 CFR 279.82(c) are those States which have petitioned EPA to allow the use of used oil as a dust suppressant as per 40 CFR 279.82(b) and EPA has granted permission for such use of used oil in those States".